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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**

| Case Law Bulletin

Week of April 3, 2017

First Circuit

United States v. Faust , No. 14-2292, 2017 WL 1244844 (1st Cir. Apr. 5, 2017) (18 U.S.C. § 924(e)(2)(B)(i) (ACCA “violent felony”))	The First Circuit affirmed in part, vacated in part, and remanded for resentencing. The court concluded that assault and battery (ABPO - Mass. Gen. Laws ch. 265, § 13D) is not categorically a “violent felony” under 18 U.S.C. § 924(e)(2)(B)(i) (ACCA), [1] but is divisible between the intentional and reckless forms and remanded for further analysis of which offense the defendant pled guilty to. The court also found that resisting arrest (Mass. Gen. Laws ch. 268, § 32B(a)), is not categorically a violent felony and is not divisible. Thus a conviction thereunder is not a violent felony under 18 U.S.C. § 924(e)(2)(B)(i).
Miranda v. Sessions , No. 16-2174, 2017 WL 1244849 (1st Cir. Apr. 5, 2017) (derivative citizenship)	The First Circuit dismissed the PFR, concluding that the alien did not meet his burden of proving U.S. citizenship former section 321(a)(3) of the Act, because paternity had been established by legitimation under the laws of Cape Verde, Angola, and Massachusetts.

Sixth Circuit

United States v. Harris , No. 16-2239, 2017 WL 1228556 (6th Cir. Apr. 4, 2017) (U.S.S.G. § 4B1.2(a) (“crime of violence”))	The Sixth Circuit affirmed the district court, concluding that a conviction for felonious assault under Mich. Comp. Laws § 750.82 must (1) be committed with a deadly weapon and (2) involve some degree or threat of physical force. Thus, the court held that a conviction under Mich. Comp. Laws § 750.82 is for a “crime of violence” under U.S.S.G. § 4B1.2(a) [2] because “there is no way to commit it without intentionally attempting or threatening physical force against another with a dangerous weapon.”
United States v. Patterson , No. 15-4112, 2017 WL 1208425 (6th Cir. Apr. 3, 2017) (18 U.S.C. § 924(e)(2)(B)(i) (ACCA	The Sixth Circuit reversed the district court’s sentence, and remanded for resentencing. The court concluded that the defendant’s aggravated robbery convictions under Ohio Rev. Code § 2911.01(A)(1), are violent felonies under 18 U.S.C. §

“violent felony”))	924(e)(2)(B)(i) (ACCA) (see fn1).
Ninth Circuit	
Ramirez v. Sessions , No. 13-71692, 2017 WL 1244901 (9th Cir. Apr. 5, 2017) (unpublished) (CIMT)	The Ninth Circuit granted the PFR and remanded, concluding that NRS § 205.465 (possession or sale of document or PII to establish false status or identity) is not a categorical CIMT and on this record, it could not be “confirmed with certainty that [the alien] was convicted of a crime having all the elements of a generic CIMT.”
Moreno-Sanchez v. Sessions , No. 14-73892, 2017 WL 1244905 (9th Cir. Apr. 5, 2017) (unpublished) (conviction)	The Ninth Circuit remanded to the Board to reconsider the alien’s eligibility for cancellation of removal under section 240A(b) of the Act. On remand, the Board must determine whether the alien’s “infraction” under CHSC § 11357(b) (possession of not more than 28.5 grams of marijuana) is a “conviction” under section 101(a)(48)(A) of the Act and Matter of Cuellar-Gomez, 25 I&N Dec. 850 (BIA 2012).

^[1] The definition of “violent felony” under 18 U.S.C. § 924(e)(2)(B) (ACCA) is “any crime punishable by imprisonment for a term exceeding one year ... that—(i) has as an element the use, attempted use, or threatened use of physical force against the person of another.” (Similar to 18 U.S.C. § 16(a)).

^[2] Under U.S.S.G. § 4B1.2(a), a “crime of violence” is “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that ... has as an element the use, attempted use, or threatened use of physical force against the person of another.” (Similar to 18 U.S.C. § 16(a)).